Complaint Handling

Lodging of Complaints

4.1 Complaints come to our Office in different modes, as indicated in the table below:

Fig. 4.1

Mode of Lodging Complaints

Mode	2001/02	2002/03	2003/04	2004/05
In person	260	425	324	396
In writing -				
by complaint form	828	1,270	722	934
by letter through post	1,116	682	1,634	1,599
by letter through fax	664	978	972	615
by letter through e-mail	360	613	742	821
By telephone	508	414	267	289
TOTAL	3,736	4,382	4,661	4,654

4.2 Complaint letters or completed complaint forms, obtained from our Office or downloaded from our homepage, may come to us by post or by fax. We also accept complaints via e-mail, though subsequent correspondence has to be by post to ensure security of information and to guard against unintended disclosure, unless the complainant can communicate electronically with digital signature under proper electronic certification.

4.3 We have a Duty Officer Scheme whereby investigation officers serve on roster to meet individuals who come to our Office to make enquiries or lodge complaints. Where the complainants need assistance in writing up their cases, our duty officer will interview them and take down details of their cases direct, for their verification later by post where necessary.

4.4 For simple initial cases, we have arrangements for complaints by telephone. The conversation is recorded on tape and then written up for verification with the complainant by post. To avoid overloading the telephone lines, such complaints should generally be made within 15 minutes and involve not more than two organisations or a great deal of documentary evidence.

4.5 Regardless of the mode, complainants must give their name and address to ensure that they are identifiable and traceable. Under The Ombudsman Ordinance, we cannot handle complaints which are made anonymously or where the complainant cannot be identified or traced (**Fig. 2.4**). To facilitate case handling, complainants are additionally requested to provide their contact telephone number so that clarification can be made readily where necessary. The Ordinance also requires us to be satisfied that complainants are the aggrieved parties.

Assessment

4.6 My counter staff, duty officers and Assessment Team form the front-line of my Office. They receive visitors, answer telephone calls and scrutinise all in-coming complaints and enquiries. Where it is evident from the outset that a matter falls outside my purview (**Fig. 2.3**), is subject to restrictions (**Fig. 2.4**) or is not to be investigated at The Ombudsman's discretion (**Fig. 2.5**), we aim to notify complainants within 15 working days. (See **Fig. 5.2** and **Annex 4** for our performance pledges.) Where possible, we try to help and advise where and how they may seek assistance or redress elsewhere. For complaints screened out because the complainants are anonymous or unidentifiable, we do not simply ignore them but treat them as "potential cases" for gathering information for indications of any pattern of systemic or systematic maladministration. This will provide insight for our complaint investigation as well as identifying possible topics for direct investigation.

4.7 Complaints within my purview are "screened in" for examination by one of four designated investigation teams. Each team, headed by a Chief Investigation Officer working to one of my two Assistant Ombudsmen, processes cases on a number of the departments and public bodies in Schedule 1 to the Ordinance.

Preliminary Inquiries

4.8 We conduct preliminary inquiries under section 11A of the Ordinance to determine whether a full investigation is necessary. Such inquiries may take the form of Internal Complaint Handling Programme ("INCH") or Rendering Assistance/Clarification ("RAC"). Often, the matters under complaint can be thus resolved or clarified without further investigation.

Fig. 4.2

Preliminary Inquiries

Type	Method	Cases concluded
I N C H	With the complainant's consent, a simple case is referred to the organisation concerned for investigation and reply direct to the complainant, with a copy to us. The Ombudsman may request the organisation to provide specific information in its reply, monitors the progress and scrutinises the reply, intervening where it is not satisfactory. In the event of the latter, we may take up the case by RAC or full investigation.	209
R A C	The Office collects key facts relating to the case. If the facts fully explain the matter under complaint, we will present the findings with observations to the complainant and suggestions to the organisation concerned on remedial action and improvement measures, where appropriate. If further inquiries are called for, a full investigation will be conducted.	1,664

4.9 Preliminary inquiries are an important expedient for processing complaints of varying complexity. They generally take shorter time with less formalities for completion. Nevertheless, as with full investigations, my Office will similarly make suggestions for improvement or remedy and monitor their implementation by the organisations concerned. In 2004/05, a total of 1,873 complaints were resolved by preliminary inquiries (**Fig. 4.2**).

Mediation

4.10 With complaints that involve only minor, or no maladministration, The Ombudsman may process by mediation under section 11B of the Ordinance. This is a form of alternative dispute resolution entered into voluntarily by mutual consent from both the complainant and the organisation under complaint. Here, the two parties meet to explore a mutually acceptable solution to the matter under complaint. Our investigators, who have undergone training as mediators, facilitate the process with impartiality.

4.11 If mediation does not result in resolution of the complaint, the Office may initiate preliminary inquiries where warranted. In such event, an investigator other than the mediator will be assigned to handle the case afresh. This is to ensure impartiality as well as confidentiality of the information provided by the parties during mediation.

Full Investigation

4.12 For complex cases involving issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, I will direct a full investigation. This necessitates extensive and intensive probing for comprehensive evidence collection. We go to original documents and subject files. We go on site visits. We seek statements from relevant persons and may interview them in person. At times, we consult members of our Panel of Professional Advisers, all experts of repute with good standing in the legal, medical and engineering fields (see **Annex 13**) whom I have appointed under section 6A of the Ordinance to advise and assist me.

4.13 When my draft report on a full investigation is ready, the organisation concerned is given every opportunity to comment and to make representations. Individuals subject to our criticism are specifically requested to explain and be heard. In recommending administrative remedies, we aim to make for more open and client-oriented, transparent and accountable public administration. Heads of organisations have a duty to report to me at regular intervals the progress of their implementation of my recommendations.

Internal Monitoring

4.14 I am assisted by my Deputy, two Assistant Ombudsmen and four teams in investigating complaints and monitoring implementation of our recommendations. I have delegated to each level specific authority within which they act on my behalf. As a general rule, the work of investigation officers is carefully vetted and monitored by their team leaders. Reports and replies are scrutinised by the directorate and then finalised personally by me.

4.15 We have a computerised complaint management system for ready information on individual cases. This facilitates compilation of statistics and documents the progress of individual cases. With its assistance, my directorate and I can closely monitor the processing of cases.

4.16 In this context, my investigation teams work under close scrutiny. My Deputy and the Assistant Ombudsmen hold meetings regularly with individual teams, to keep tabs on cases under processing. These sessions provide a forum for frank exchange of views and analysis of facts, debate on contentious points and directions for follow-up action. Above all, they ensure consistency in case work and offer opportunities for sharing experience.

4.17 To keep myself well posted on our operations, I attend meetings of each team at least once a month. In this way, I directly guide investigations, clear uncertainties and determine strategies on complex cases.

4.18 From time to time, I convene open forums to update staff on concepts and approaches, principles and philosophy on matters within my purview (see **Chapter 1**).

Outcome of Investigation

4.19 On conclusion of each full investigation, the complaint is classified according to how far the allegations of maladministration have been found to be true : "substantiated", "partially substantiated" or "not substantiated". In some cases, although the specific allegations in the complaint are not substantiated, other significant acts of maladministration may be identified in the course of our investigation. Such cases are classified as "substantiated other than alleged", to reflect the gravity of the maladministration thus unearthed. The definitions of outcome classification are given in the **Glossary of Terms** (see **Annex 2**). The results of full investigations are tabulated in **Table 8**.

4.20 The outcome of an investigation depends entirely on whether the allegations are borne out by facts. Our investigators endeavour to examine each complaint objectively and impartially, establish the facts accurately, analyse each aspect carefully and arrive at a fair conclusion. We have no control over, and certainly do not attempt to control, the nature or outcome of complaints : we only determine the truth. This is reflected by the fluctuating proportions of cases substantiated (fully, partially or other than alleged) and unsubstantiated over the years. For example, we provide the figures for the past five years:

Fig. 4.3

Percentage of Substantiated and Unsubstantiated Cases#

Cases / Year	Substantiated*	Unsubstantiated
2000/01	42.9%	49.7%
2001/02	84.9%	12.7%
2002/03	43.6%	54.8%
2003/04	14.4%	83.1%
2004/05	64.0%	36.0%

Does not include "withdrawn/discontinued" or "incapable of determination" cases. Hence, cases "substantiated" and "unsubstantiated" may not add up to 100%.

* *Includes also "partially substantiated" and "substantiated other than alleged" cases.*

Cases Discontinued

4.21 Although most cases not within my purview are screened out at the assessment stage, some have to be discontinued during preliminary inquiries or even full investigation. There were 977 discontinued cases this year, a significant increase compared with 246 in the previous year. To identify possible reasons for significant fluctuations in the number of

discontinued cases, this year we started to record in our computer database the reason for discontinuation in each case. A breakdown of discontinued cases by the major reasons is provided below.

4.22 The statistics show that by far the most significant is the complainants' failure or refusal, at the outset, to consent to our obtaining their personal data from, and/or our copying their correspondence to, the organisations concerned for further processing. Another common feature is the complainants' failure or inability to provide adequate information to establish a *prima facie* case to justify our pursuing their case. In some cases, the complainants simultaneously lodge their complaints with the organisations concerned direct and the latter have either already answered satisfactorily or taken appropriate remedial action. In yet other cases, the complaints are found to be outside our jurisdiction or within the restrictions under the Ordinance after clarification during our inquiry or investigation process.

Code on Access to Information

4.23 In March 1995, Government introduced an administrative Code on Access to Information on a pilot basis in furtherance of open and accountable government. The Code has been extended progressively since December 1996 to all Government bureaux and departments.

4.24 Where a bureau or department does not comply with the Code, an applicant may lodge a complaint with me to seek a review of the initial decision by the organisation in receipt of the request for information. In the past five years since 2000/01, we have dealt with 22 such complaints.

Systemic Issues

4.25 In the course of processing individual complaints, we often identify "patterns" or continuing problems that call for a more global review and determined revamp of practices.

Fig. 4.4

Discontinued Cases

Reason for Discontinuation	No. of Cases	%
Complainant's failure or refusal to consent *	549	56.2
Complainant's failure to establish *prima facie case*	239	24.5
Remedy/reply by organisation	19	1.9
Outside jurisdiction/restriction after clarification	16	1.6
Others (e.g. demise of complainant; complainant merely expressing opinions)	154	15.8
TOTAL	977	100

* *For inquiries, a complainant's consent is required for reproduction of materials to, and obtaining personal data from the organisations concerned.*

Fig. 4.5

Complaints Relating to Code on Access to Information since 2000/01

2000/01	4
2001/02	1
2002/03	3
2003/04	9
2004/05	5

Seepage : Perennial Cause for Complaint

4.26 This perennial problem has continued to engage our attention in the past three years, when we highlighted the need for more effective inter-departmental coordination and the importance of cooperation among neighbours. Seepage is basically a building management matter, which should be resolved by the owners of the premises where the cause of seepage originates. Where it causes environmental nuisance, public hygiene or building safety risks or wastage or contamination of potable water supply, Government has a statutory responsibility to abate the problem. In this connection, three departments are involved – Food and Environmental Hygiene, Buildings and Water Supplies – each having a specific role for different aspects of seepage. Where seepage occurs in public housing, the Hong Kong Housing Authority and the Housing Department have delegated authority to deal with the cases.

4.27 Many seepage-related complaints have been lodged with our Office when none of the departments could find evidence that would allow them to invoke their statutory powers to deal with the problem. While there was no maladministration, the problem often remains unresolved after a round of inter-departmental referrals. This leaves seepage still a problem for the victim, dissatisfied and critical of Government despite the departments having done their duty faithfully under their respective laws and with cooperative coordination.

4.28 To further improve inter-departmental arrangements for responding to seepage cases, the Buildings Department and the Food and Environmental Hygiene Department set up a joint office in December 2004 to deal with them. Its operation will be reviewed in mid-2005. More recently, Government has announced that it is considering a proposal to set up a tribunal for building management matters, including seepage issues. It will be consulting the public on this in the latter half of 2005.

4.29 We welcome these developments and await the outcome with keen interest. We firmly believe that unless risk to public health or safety calls for emergency action by Government, private building management is for property owners themselves with Government facilitating and assisting where necessary.

Contracting-Out of Services

4.30 My 2004 Annual Report highlighted the trend for many Government departments to contract out services and a marked rise in the number of public complaints about such contract services and inadequate supervision over contractors by departments. In this connection, we initiated a direct investigation into the supervision of property services agents by the Housing Department on 20 January 2005.

Inter-departmental Co-ordination

4.31 In the year under report, my Office handled a number of complaints that clearly

called for greater inter-departmental co-ordination. One case in particular concerned the display of laundry in public places for drying, not only marring the cityscape but also making for inconvenience or even risk to pedestrians and motorists. The six Government departments involved were unable to get their acts together to solve the problem. Except for a District Office of the Home Affairs Department, which commendably did take up a coordinating role, none of the other five departments took the initiative or accepted the responsibility to tackle the problem. Yet, they were prepared to take action in joint operation coordinated by the District Office. The case showed up the five departments as unwilling to assume sole responsibility or a leading role in solving the problem.

4.32 In concluding the case, the Acting Ombudsman had to seek the intervention of the Chief Secretary for Administration to address the issue (see summary of case no. OMB 2004/0673, 0829, 0830, 2005, 2006 and 2007 in **Annex 12**.) In the event, the Home Affairs Department has been tasked to coordinate Government action.

Reluctance to Take Enforcement Action

4.33 Some Government departments remained reluctant to take enforcement action against individuals or companies who had refused, despite repeated notices or even warnings, to comply with lawful requests by public officers carrying out statutory duties. These departments tend to focus on the difficulty of collecting adequate evidence for successful prosecution or deficiencies in their statutory authority.

4.34 In a case involving prosecution against unauthorised free bus services, my Office questioned the Transport Department view that prosecution of the service operators would necessitate the production of evidence to establish the same driver having driven the same bus for a certain number of days. As the relevant statutory provision did not seem to support its view, we recommended that Transport Department seek legal advice. The Department maintained that its view had been based on the advice of the Department of Justice in 2002. Having examined this advice, we noted that it had been given in the context of possible prosecution against the driver as opposed to the operator. The Department subsequently admitted that prosecuting the operator did not require production of the evidence above.

4.35 Another example concerns prosecution of unauthorised private coaching in public swimming pools. There have been numerous complaints about failure of the Leisure and Cultural Services Department ("LCSD") to prosecute for blatant unauthorised commercial activities. However, each time LCSD had held that no prosecution could be instituted, even where the coaching service had actually been advertised at the pool complex. LCSD considered it necessary for actual payment to take place within the pool complex for such coaching service to be actionable; but claimed this was difficult to catch. It was only after repeated requests from our Office that LCSD eventually sought legal advice. In the event, LCSD was advised that actual payment within the precincts of the swimming pools was not a prerequisite for prosecution as long as there had indeed been payment for the coaching service and the commercial transaction completed by the provision of such service in the swimming pool.

Our View

4.36 We watch for patterned issues, as they often reflect an unhealthy culture within an organisation or indicate some systemic and systematic problem. Where appropriate, we conduct a direct investigation into the subject or take it up with the senior management of the organisation concerned for the issue to be properly addressed.

4.37 We do not concern ourselves with decisions of prosecution, as they are outside our jurisdiction. However, where a complaint against such decisions suggests a possible mistake of law and the matter is of public interest, we will look into it.